

REMARKS/ARGUMENTS

The present Amendment is in response to the Official Action mailed February 4, 2008. Claim 26 has been amended, while claims 1-25, 27-30, and 37 have been previously canceled. Thus, claims 26, 31-36, and 38 remain pending in the present case. Because of the finality of the Action, the present Amendment is being submitted along with a Request for Continued Examination. The following sets forth Applicant's remarks pertaining to the currently pending claims and the outstanding Action.

As an initial matter, Applicant respectfully thanks the Examiner for conducting the telephone interview of May 6, 2008, with Applicant's undersigned counsel. During that discussion, the outstanding Action, and in particular, the rejections of the previously presented claims in view of U.S. Patent Application Publication No. 2002/0016633 to Lin et al. ("*Lin*") were discussed. Applicant's counsel pointed out that *Lin* only discloses implanting an intervertebral spacer formed of separate cancellous and cortical portions in the spine. The present invention, on the other hand, contemplates placing in the spine an implant of cancellous and cortical portions formed *integral* with one another. This is confirmed by the Examiner's interview Summary of May 14, 2008.

In order to more specifically capture this distinction and that which Applicant believes is the present invention, independent claim 26 has been amended to require that the claimed method be a method of making and implanting an allograft lumbar implant, and include the step of placing the implant in the lumbar spine. This is clearly not taught by *Lin*. The Examiner himself, in both the outstanding Action and aforementioned telephone interview, agreed that *Lin* only discloses forming a body of integral cancellous and cortical bone as an intermediate product, not as a final implant for placement in the spine. As such, Applicant respectfully submits

that independent claim 26, as amended, overcomes the rejections set forth in the Action.

During the May 6<sup>th</sup> telephone interview, the Examiner did raise issue with Applicant's proposals to amend independent claim 26. Specifically, the Examiner was unsure whether such an amendment was proper at this stage of prosecution, given that sole independent claim 26 has heretofore only been directed to a method of making an allograft lumbar spinal implant. The Examiner indicated that changing the method to also include implanting such an implant may change the scope of the present invention and thusly may not be proper. However, Applicant notes that the above amendments of claim 26 have narrowed such claim. As such, Applicant does not believe the amendment to require an additional search in different areas than have already purportedly been searched. In fact, the Examiner's previous searches should have uncovered prior art pertinent to amended independent claim 26. Furthermore, Applicant respectfully submits that amended claim 26 is not directed to an invention distinct from and independent of the invention previously claimed as defined in MPEP § 802.01. Thus, Applicant respectfully submits that the amendment of independent claim 26 is proper.

In light the foregoing, Applicant respectfully submits that independent claim 26 constitutes allowable subject matter. Although each and every one of the remaining dependent claims have not been discussed specifically herein, such claims are necessarily allowable based solely upon their proper dependence from independent claim 26. Therefore, Applicant respectfully requests allowance of the present case.

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejection of

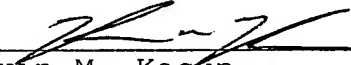
the claims and to pass this application to issue.

If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that he telephone Applicant's attorney at (908) 654-5000 in order to overcome any additional objections which he might have.

If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

Dated: June 4, 2008

Respectfully submitted,

By   
Kevin M. Kocun  
Registration No.: 54,230  
LERNER, DAVID, LITTENBERG,  
KRUMHOLZ & MENTLIK, LLP  
600 South Avenue West  
Westfield, New Jersey 07090  
(908) 654-5000  
Attorney for Applicant

LD-446\